

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

10 In Re: ) Bankruptcy Case  
11 HOWARD J. MAIN and AMANDA H. MAIN, ) No. 07-62583-fra7  
12 Debtors. )  
13 RICHARD SWANSON and CHARITY SWANSON, ) Adversary Proceeding  
14 Plaintiff, ) No. 08-6237-fra  
15 vs. )  
16 HOWARD J. MAIN and AMANDA H. MAIN, ) MEMORANDUM OPINION  
17 Defendants. )

18 Howard and Amanda Main were indebted to Richard and Charity  
19 Swanson for \$20,000.00 as monumented by a promissory note dated January  
20 25, 2007. No part of the obligation has been paid, and the Mains filed a  
21 petition for relief under Chapter 7 of the Bankruptcy Code on September  
22 14, 2007.

23 The Plaintiffs now seek a judgment excepting their claim from  
24 discharge pursuant to Code § 523(a)(2)(A). They further seek revocation  
25 of the Debtors' discharge under Code § 727(d). The matter came on for  
26 trial in Medford, Oregon, on January 21, 2010. After considering the

1 testimony and evidence of parties, the Court concludes that the  
2 Plaintiffs have not sustained their burden of proof, and that the  
3 Debtors' discharge both generally and of the Plaintiffs' claim, must be  
4 allowed.

5 **I. PROCEDURAL ISSUES**

6 The Debtors' petition for relief was filed on September 14,  
7 2007. The deadline for objection to discharge was set for December 14,  
8 2007. This adversary proceeding was instituted a year later, on December  
9 18, 2008.

10 Debtors maintain that the adversary proceeding is not timely,  
11 and should be dismissed.

12 The Debtors' petition for relief was a "bare" filing,  
13 unaccompanied by schedules. Their schedules were subsequently filed on  
14 September 24, 2007. Schedule F, setting out the holders of unsecured  
15 nonpriority claims, listed the Plaintiffs' claim under the name of  
16 "Richard Swanson, Grants Pass, Oregon 97526." No other address was  
17 given. The chapter 7 trustee subsequently reported the case as a "noasset  
18 estate," the Debtors' discharge was entered on December 17, 2007,  
19 and the case was closed on that date.

20 Andrea Main wrote to the Plaintiffs on February 4, 2008,  
21 disclosing that the Debtors had gone into bankruptcy: "It was our  
22 understanding that you were notified by our attorney of this. I believe  
23 now that maybe you were not." Charity Swanson testified, without  
24 contradiction, that this was the first time that she had heard of the  
25 Mains' bankruptcy.

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When a debt is not listed or scheduled by a debtor with the creditor's name, if known to the debtor, Code § 523(a)(3)(B) excepts from discharge a claim of the sort specified in § 523(a)(2), unless the creditor had notice or actual knowledge of the case in time for a timely filing of an objection to discharge. The Plaintiffs were not aware of the Debtors' bankruptcy until February 4, 2008, or shortly thereafter. While the language of the Code requires only that the creditor's name be indicated, applicable rules and instructions regarding preparation of schedules clearly indicate that an address be added.<sup>1</sup> The parties in this case belong to the same church, had met in person several times, and live in a relatively small community. There is no reason to believe that the Defendants were not aware of, or could not have easily ascertained, the Plaintiffs' address. The notice provided by the schedules in this case was not sufficient to permit discharge of the Debtors' obligation to the Plaintiffs without giving the Plaintiffs an opportunity to object. It follows that the Court must consider the merits of Plaintiffs' claim under Code §§ 523 and 727.

## II. ANALYSIS

19                   Prior to the time the loan was made, it had become known  
20 throughout the parties' congregation that Debtors were in dire financial  
21 straits. At some point it was agreed that the parties should meet to  
22 discuss ways in which the Swansons could assist the Mains (Mrs. Swanson  
23 claims that Mrs. Main made the first call; Mrs. Main has no particular  
24 memory).

<sup>26</sup> <sup>1</sup>See Fed.R.Bankr.P. 1007(b)(1). The official form for disclosure of unsecured claims, Schedule F, requires an address for each creditor.

The parties met at a local restaurant. The Mains indicated that they needed \$15,000.00. It was the Swansons' understanding that this would be enough to bring the Mains' house payments current and pay off all of their other debts, including a considerable sum owed to medical providers for the care of the Mains' son. The Swansons maintained that they were told that the Mains' current obligations would be paid off by the loan proceeds.

After the meeting, the Swansons decided that the Mains would benefit from a larger amount, and agreed to loan \$20,000.00. The parties met later to sign the promissory note, which was placed into evidence. Thereafter, the Mains went through all the loan proceeds, but not for the purposes anticipated by the Swansons. The Swansons now hold that they were defrauded because the Mains' financial condition was not what it was represented to be; and that the Mains spent the money for purposes, or to pay debts, not originally disclosed to the Swansons.

Code § 523(a)(2)(A)

11 U.S.C. § 523(a)(2) reads in part as follows:

(a) A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—

(2) for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by—

(A) false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor's or an insider's financial condition; [emphasis added]

In order to prove fraud under § 523(a)(2)(A), a creditor must prove by a preponderance of the evidence each of five elements: (1) the

1 debtor made a material misrepresentation, (2) with knowledge of its  
2 falsity, (3) with the intent to deceive, (4) on which the creditor  
3 justifiably relied, and (5) due to which the creditor sustained loss or  
4 damage. In re Kirsh, 973 F.2d 1454, 1457 (9th Cir. 1992).

5 The Plaintiffs' claim fails in two respects:

6 (1) The exception for false pretenses, a false representation,  
7 or actual fraud excludes statements respecting the debtors' financial  
8 condition. There is no evidence that the Debtors tendered, or that the  
9 Plaintiffs relied, on any written statement regarding the Debtors'  
10 finances, or their intended use of the funds. Note that the promissory  
11 note is silent on these issues.

12 (2) Even if Code § 523(a)(2)(A) applied in this situation, the  
13 Plaintiffs fail to advance any evidence that the Debtors intended to  
14 deceive them.

15 Code § 727(d)

16 Code § 727(d)(1) requires that the court revoke a debtor's  
17 discharge if "such discharge was obtained through the fraud of the  
18 debtor, and the requesting party did not know of such fraud until after  
19 the gaining of such discharge." This requires the showing of an  
20 intentional wrong, such as the intentional omission of assets from the  
21 debtor's schedules. See 6 Collier on Bankruptcy ¶ 727.15[2] (15th ed.  
22 rev.).

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Because the Plaintiffs presented no evidence that the Debtors obtained their general bankruptcy discharge of debts through intentional wrongdoing, their claim under § 727(d) must fail.<sup>2</sup>

### III. CONCLUSION

For the reasons given, Plaintiffs' claims against the Defendants to except their debt from discharge under Code § 523(a)(2) and for revocation of Defendants' general discharge of debts must be denied. Counsel for Defendants should submit a form of judgment consistent with this memorandum opinion.



FRANK R. ALLEY, III  
Bankruptcy Judge

<sup>2</sup>The complaint also has a claim under § 727(a)(4) to deny Debtors' discharge. Assuming Plaintiffs could bring such a claim after the discharge has already been granted, the court would also find for Defendants, as there is no evidence implicating any of the situations found in that provision.